PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Joichiro EZAKI et al. Group Art Unit: 2824

Application No.: 10/550,519 Examiner: N. NGUYEN

Filed: September 23, 2005 Docket No.: 123604

For: MAGNETIC MEMORY CELL, MAGNETIC MEMORY DEVICE, AND METHOD OF MANUFACTURING MAGNETIC MEMORY DEVICE

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the May 25, 2007 Restriction Requirement, Applicants provisionally elect Group I, claims 1-48, with traverse.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

> Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

The Office Action does not establish that each and every element of independent claims 1, 21 and 49 are known in the prior art. Therefore, Applicants respectfully submit that lack of unity of invention has not been established, and thus a restriction requirement at this time is improper.

Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,

James A. Oliff
Registration No. 27,075

Randi B. Isaacs
Registration No. 56,046

JAO:RBI/hms

Date: June 22, 2007

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

DEPOSIT ACCOUNT USE AUTHORIZATION
Please grant any extension necessary for entry;
Charge any fee due to our Deposit Account No. 15-0461